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Supreme Court, U.S.

No. 97.205 JUL 30 1997

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In The

Supreme Court Of The United States

October Term, 1997

SUSAN TANGARI,

Petitioner,

v.

STATE OF CONNECTICUT,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF THE
STATE OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI (WITH ATTACHED APPENDICES)

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QUESTION PRESENTED FOR REVIEW

I. Whether A State Court Defendant Can Intelligently And Knowingly Waive Her Constitutional Right To A Jury Trial When She Was Not Informed By The Court What Constitutionally Guaranteed Right She Was Giving Up; Nor Of The Consequences Of Her Waiver?

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CITATIONS TO OPINION AND ORDER BELOW

The opinion of the Appellate Court of the State of Connecticut is reported at 44 Conn. App. 187, A.2d (1997). It is reported in Petitioner's Appendix at 1A-12A. The Petitioner filed a Motion For Reconsideration And For Reargument En Banc to the Connecticut Appellate Court which was denied on march 6, 1997. It is reprinted in Petitioner's Appendix at 13A. The Petitioner then filed A Petition for Writ of Certiorari to the Connecticut Supreme Court which was denied on May 1, 1997. It is reprinted in Petitioner's Appendix at 14A.

BASIS FOR JURISDICTION

The opinion of the Supreme Court of the State of Connecticut was reported on February 4, 1997. (See Pet. App. at 1A). The Petitioner's Motion For Reconsideration And For Reargument En Banc to the Connecticut Appellate Court was denied on March 6, 1997. (See Pet. App. at 13A). The Petitioner's Petition for Writ Certiorari to the Connecticut Supreme Court was denied on May 1, 1997. (See Pet. App. at 14A).

The Petitioner is relying upon Rules 10 et seq. of the Rules of the Supreme Court of the United States in filing this petition.

The jurisdiction of this Court is invoked under Title 28, United State Code § 1257 (Final judgments or decrees rendered

by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where...any title, right, privilege, or immunity is specially set up or claimed under the Constitution of the treaties or statutes of...the United States).

CONSTITUTIONAL AND STATE STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV:

§ 1. Citizenship rights not to be abridged by states

Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; not deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the United States, Amendment VI:

Jury trial for crimes, and procedural rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Constitution of the United States, Article III, Section 2

§ 2. Jurisdiction

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministries and Consuls; to all Cases admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between citizens of different States; between citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, Except on Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State,

the Trial shall be at such Place or Places as the Congress may by Law have directed.

Connecticut Rules Of Court:

§638. Arraignment-Advisement of Constitutional Rights- Collective Statement

If the judicial authority shall have collectively informed all defendants of their rights at the opening of Court, he shall preface the individual arraignment of each by asking whether he heard and understood the collective statement.

STATEMENT OF THE CASE

A. Facts Material To the Consideration Of the Question Presented.

The Appellant was presented on November 10, 1992 in the Superior Court for the State of Connecticut before the Honorable Robert A. Martin to answer to the charge of Larceny First Degree in violation of Connecticut General Statutes Section 53a-122(a)(4). This matter was ordered transferred to the Superior Court for the Judicial District of Windham-Part A at Putnam. (Pet. App. at 15A).[1]

On November 20, 1992, the Petitioner appeared and pled not guilty and elected to be tried by a jury. The Assistant State's Attorney filed with the Court a Long form information Dated December 15, 1992, which charged the Petitioner with Larceny in the First Degree in violation of C.G.S. 53a-119 and 53a-122(a)(4). On April 30, 1993, the Petitioner appeared before the Honorable Russell F. Potter, Jr. in the Judicial District of Windham at Putnam, CT. Her attorney, Arthur Meisler, notified the Court that the Petitioner wished to change

[1]A review of the transcript of this court date reveals that Judge Martin did not follow Connecticut Practice Book §683. A review of the record in this matter is inadequate to determine whether or not the Petitioner was present during the group advisement of rights, due specifically to the fact that no indication was placed on the record by the court. Therefore, no inference that the Petitioner was advised of her Constitutional right to a jury trial at her arraignment can be properly drawn from this transcript.

her election from jury trial to a Court trial. The Court made a very brief inquiry into the Petitioner's intention to waive her constitutional right to a Jury trial. The Court asked the Petitioner whether she discussed the matter thoroughly with her attorney and if she understood that she was giving up her right to a Jury trial. (Pet. App. at 16A - 17A). However, the Court failed to make any further inquiry so as to determine whether or not the Petitioner's waiver was knowingly and intelligently made. The Court also failed to perfect the record by finding that the Petitioner made a knowing, voluntary and intelligent waiver of her right to a Jury trial. The Court ordered this matter transferred to the Court trial list on this same day.

B. Procedural History of the Case

The Petitioner, Susan Tangari, was arrested by warrant on November 2, 1992. On March 9, 1995, a Court trial commenced in this matter. Following the Court trial, the Petitioner was found guilty of Larceny in the First Degree.

On June 19, 1995, the Court sentenced the Petitioner to a sentence of seven years suspended after three years followed by five years of probation.

An Appeal of this matter was filed in a timely matter on July 7, 1995. On February 4, 1997, this Court affirmed the judgement of the trial court. The Connecticut Appellate Court concluded that, "in light of the totality of the circumstances on the record,...the

defendant waived her right to a jury trial and that her waiver was voluntary, knowing and intelligent." (See Pet. App. at 9A)

On appeal, the Petitioner claimed inter alia that the trial court erred by not properly canvassing the Petitioner so as to determine whether the Petitioner's waiver of a jury trial election was knowingly, intelligently and voluntarily made; thereby denying the Petitioner the fundamental right to a jury trial as guaranteed by: the Sixth and Fourteenth Amendments and Article III, Section 2, Clause 3 of the United States Constitution; as well as Article I, Section(s) 8 and 9 of the Constitution of the State of Connecticut. The Connecticut Appellate Court declined to find that the Petitioner was denied her fundamental constitutional right to a jury trial, due to an ineffective canvass of the Petitioner by the trial court, because in its estimation the totality of the circumstances indicated that the Petitioner voluntarily, knowingly and intelligently waived her right to a jury trial. Id.

In so holding, the Connecticut Appellate Court placed great emphasis on the erroneous fact that, "[t]he Court gave an advisement of rights to all persons, including the defendant, that included the fact that the defendant was entitled to a trial by jury". (See Pet. App. at 6A, 9A) This fact, however, is not supported by the trial court record or the trial transcript of that proceeding. The Connecticut Appellate Court also relied on the fact that the Petitioner was represented by

counsel and that she affirmatively answered the trial court's questions. (Id.)

The Connecticut Appellate Court's decision was officially released on February 4, 1997. (See Pet. App. at 1A). The Petitioner, on February 14, 1997, then filed A Motion For Reconsideration And For Reargument. This motion was denied by the Appellate Court of Connecticut on March 6, 1997. (See Pet. App. at 13A).

The Petitioner next proceeded to petition the Connecticut Supreme Court for Writ of Certiorari on April 7, 1997. On May 1, 1997, the Connecticut Supreme Court denied the Petitioner's petition. (See Pet. App. at 14A).

REASON FOR GRANTING THE WRIT

I. The Connecticut Appellate Court's Determination That The Petitioner Voluntarily, Intelligently And Knowingly Waived Her Right To A Jury Trial Violates The Sixth Amendment To The United States Constitution Which Implicates An Important Federal Constitutional Question Which Conflicts With Applicable Decisions Of This Court And Of Established Federal Precedent Of The United States Circuit Courts, This Petition of Writ Of Certiorari Should Be Granted.

The Sixth Amendment to the United States Constitution, as applied to the states through the due process clause of the Fourteenth Amendment, guarantees criminal defendant's the fundamental right to a jury trial. Duncan v. Louisiana, 391 U.S. 145, 149 (1968)

The Sixth Amendment provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for

his defense. U.S. Const. Amen. VI.

This Court has stated that the basic purpose of a jury trial is to:

> prevent oppression by the Government. "Providing an accused with the right to be tried by a jury of his peers gives him an inestimable safeguard against the corrupt or overzealous prosecutor and against the complaint, biased, or eccentric judge". Duncan v. Louisiana, 391 U.S. at 156.

A defendant may forego the protections of a jury trial and may waive his/her right to a jury trial by electing to be tried by the Court. Patton v. United States, 281, U.S. 276, 298 (1930). Yet, a defendant does not have a constitutionally guaranteed right to waive a jury trial and elect a bench trial, as compared to the absolute assurance of the right to a jury trial, because either the prosecution or the bench may refuse to accede to such a request. Singer v. United States, 380 U.S. 24, 36 (1965) This is so because:

> The Constitution recognizes an adversary system as the proper method of determining guilt, and the Government, as a litigant, has a legitimate interest in seeing that cases in which it believes a conviction is warranted are tried before the tribunal which the Constitution regards as most likely to produce a fair result. Id.

Although many states follow these

federal procedural rules, "[s]till others have provided that the question of waiver is a matter solely for the defendant's informed decision, e.g., Connecticut (Conn. Gen. Stat. Rev. §54-82 (1958) Id. To achieve a valid waiver of a constitutionally guaranteed fundamental right, such as a jury trial, there must be "an intentional relinquishment or abandonment of a known right or privilege". Johnson v. Zerbst, 304 U.S. 458, 464 (1938) Court's therefore must:

> indulge every reasonable presumption against waiver of fundamental constitutional rights and...not presume acquiescence in the loss of fundamental rights. Id.

A defendant's "informed decision" as the Connecticut legislature espouses must, thereby, be an intentional relinquishment of a known right or privilege. As such, a waiver of a fundamental right cannot be upon assumption, speculation and surmise, but must be grounded in uncontroverted evidence of such a waiver, and cannot be presumed from a silent record. Boykin v. Alabama, 395 U.S. 238, 242-43 (1969).

The waiver of a constitutionally guaranteed right cannot be presumed from a silent record and it must also be voluntary. Thus:

> [w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely

consequences." Brady v. United States, 396 U.S. 742, 748 (1970).

This court has mandated that the determination of:

> [W]hether or not there is an intelligent, competent, self-protecting waiver of jury trial by an accused must depend upon the unique circumstances of each case." Adams v. United States,ex rel. McCann, 317 U.S. 269, 278 (1942).

The person asserting a violation of their constitutional right must bear "the burden of establishing a prima facie invalid waiver." Id. at 281. Although the Petitioner bears the prima facie burden of proof, she is not bound to accept the Connecticut Appellate Court's findings because "the question of whether there has been a denial of the right to a jury trial is reviewed de novo." U.S. v. Robertson, 45 F.3d 1423, 1430 (10th Cir. 1995). With this understanding, the Petitioner would respectfully submit that the colloquy between the court and the Petitioner was too cursory to adequately insure that she had knowingly, voluntarily and intelligently waived her right to a jury trial. The two questions asked of the Petitioner, "([Y]ou've discussed this change thoroughly with your lawyer?" and "You understand that you are giving up your right to a jury trial?") (See Pet. App. at 16A) do not adequately inform the Petitioner of her right to a jury trial; nor does this colloquy establish what alternative she has or what consequential

rights she is abandoning. She therefore cannot be expected to have made a knowing and intelligent waiver. The mere fact that she responded to the Trial Court's inquires in an affirmative manner, does not demonstrate that she knew or intelligently made such a decision. Seeing that the "right to a jury trial is personal to a defendant and one which he [she] alone may waive." United States, ex rel. Williams v. DeRoberts, 715 F.2d 1174, 1182 (1983). Incumbent upon this personal right is the fact that the person waiving the right must do so in an intelligent fashion with sufficient awareness of the relevant circumstances and likely consequences. The Petitioner would submit that despite the presence of counsel, the Court had a affirmative duty to inform her of the likely consequences because:

> [t]here appears to be unanimous agreement among those circuits that have addressed the issue that trial court should inform defendants, on the record, of the nature of the right to trial by jury and the consequences of waiving that right before a waiver is accepted. U.S. v. Robertson, 45 F.3d 1423, 1432 (10th Cir. 1995)

The Petitioner would respectfully submit that the right to a jury trial is so profoundly important, that mandatory interrogation is necessary to ensure that defendants intelligently and knowingly understand their rights when they voluntarily waive their fundamental right to a jury trial. It is Petitioner's assertion that the prevailing law in the

State of Connecticut Should be amended to demand Court's to interrogate defendant's who wish to waive such a fundamental constitutional right.

The Petitioner would also assert that the colloquy between the trial court and the petitioner was inadequate to determine if the petitioner intelligently and knowingly waived her right to a jury trial. This fact becomes abundantly clear when one examines the required colloquy for a jury trial waiver which is mandated by the federal courts. It is imperative that the trial court:

> explain that a jury is composed of twelve members of the community, that the defendant may participate in the selection of jurors, and that the verdict of the jury is unanimous. The court should inform the defendant that if he waives a jury, the judge alone will decide guilt or innocence. After informing the defendant of these factors, the trial court should then ascertain whether the defendant wishes to waive his right to a jury trial. Only after this type of inquiry will the court be able to determine that the defendant understands his right to a jury trial and the consequences of waiver. United States v. Delgado, 635 F.2d 889, 890 (7th Cir. 1980)

These factors are conspicuously absent from the colloquy between the trial court and the petitioner. (See Pet. App. at 16A - 17A). Moreover, the protections now afforded state court criminal defendant's

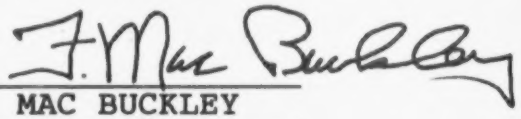
by way of the Connecticut General Statutes and the Connecticut Practice Book do not rise to the level of protections afforded federally charged criminal defendant's.

Had a colloquy between the Petitioner and trial court followed the mandates set forth in United States v. Delgado, supra, then there could be little question that the Petitioner waived her right to a jury trial in a constitutionally sufficient manner. However, the transcript of the waiver proceeding does not bear this fact out. (See Pet. App. at 16A-17A). Moreover, the conclusion of the Connecticut Appellate Court is not in keeping with Federal precedent as it is now established and must therefore be reversed. This is so because Connecticut's Appellate Court's reasoning fails to account for the fact that a valid waiver "must be knowing and intelligent", and, more importantly, it must be "accomplished with sufficient awareness of the relevant circumstance and likely consequences." Brady v. United States, 397 U.S. at 748. Accordingly, because the Connecticut Appellate Court's decision constitutes an important federal constitutional question and it conflicts with the relevant federal precedent of this Court and federal circuit courts of appeal, the Petition For A Writ of Certiorari should be granted.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari to the Appellate Court for the State of Connecticut should be granted.

THE PETITIONER,

By 

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For Reconsideration And For
Reargument En Banc dated
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Order of the Appellate Court
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For Writ of Certiorari to
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Excerpt from State Trial Court
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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

STATE OF CONNECTICUT *v.* SUSAN TANGARI (14967)

Foti, Heiman and Stoughton, Js.

Convicted of the crime of larceny in the first degree, the defendant appealed to this court. *Held*:

1. The defendant's waiver of her right to a jury trial was voluntary, knowing and intelligent; the trial court sufficiently advised the defendant that by electing a trial to the court, she was giving up her right to be tried by a jury, and the defendant confirmed that she had discussed the decision to give up her right to a jury trial with her counsel and understood that by electing a trial to the court she was giving up that right.
2. The evidence presented was sufficient to permit the trial court to find the defendant guilty of larceny in the first degree.

Argued November 5, 1996—officially released February 4, 1997

Information charging the defendant with the crimes of larceny in the first degree and larceny in the second degree, brought to the Superior Court in the judicial district of Windham at Putnam and tried to the court, *Potter, J.*; judgment of guilty of larceny in the first

degree, from which the defendant appealed to this court. *Affirmed.*

Robert P. Pickering, with whom, on the brief, was *F. Mac Buckley*, for the appellant (defendant).

Marjorie Allen Dauster, assistant state's attorney, with whom, on the brief, were *Mark S. Solak*, state's attorney, *Mark A. Stabile*, supervisory assistant state's attorney, and *Roger R. Caridad*, assistant state's attorney, for the appellee (state).

HEIMAN, J. The defendant appeals from the judgment of conviction, rendered after a court trial, of larceny in the first degree in violation of General Statutes § 53a-122 (a) (4).[1] The defendant was found not guilty of a charge of larceny in the second degree in violation of General Statutes § 53a-123. The defendant asserts that her conviction is fatally flawed because the trial court (1) ineffectively canvassed her when she withdrew her claim for a jury trial and elected to be tried by the court and (2) found her guilty of larceny in the first degree when the evidence was insufficient to establish that she possessed the requisite intent to com-

[1] General Statutes § 53a-122 (a) provides in pertinent part: "A person is guilty of larceny in the first degree when he commits larceny as defined in section 53a-119 and . . . (4) the property is obtained by defrauding a public community, and the value of such property exceeds two thousand dollars."

General Statutes § 53a-119 provides in pertinent part: "A person commits larceny when, with intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property from an owner. Larceny includes, but is not limited to . . .

"(6) Defrauding of public community. A person is guilty of defrauding a public community who (A) authorizes, certifies, attests or files a claim for benefits or reimbursement from a local, state or federal agency which he knows is false; or (B) knowingly accepts the benefits from a claim he knows is false; or (C) as an officer or agent of any public community, with intent to prejudice it, appropriates its property to the use of any person or draws any order upon its treasury or presents or aids in procuring to be allowed any fraudulent claim against such community. For purposes of this subdivision such order or claim shall be deemed to be property. . . ."

mit that crime. We are unpersuaded and affirm the judgment of the trial court.

The following facts are pertinent to our resolution of this appeal. The defendant was employed as the assistant tax collector for the town of Ashford beginning June 2, 1988. She had previously worked as an assistant bookkeeper for the town of Coventry and was familiar with municipal finance. As assistant tax collector, the defendant, along with the tax collector, collected taxes remitted to the town by its taxpayers, gave the proper receipts for payments, validated the rate bills for the paid taxes, deposited the tax money received, balanced the rate bills with the receipts of tax payments, and reported the collection of taxes to the town treasurer.

Maryann Simpson was elected tax collector of Ashford and took office on November 18, 1991. At the time that she took over the office of tax collector, she requested that an exit audit be conducted. An exit audit was conducted by Gary Houser and Stan Cusick of the accounting firm of Cole, Frago, Cusick, Chestler and Company. When Houser went to the office of the tax collector on November 18 or 19, 1991, he discovered that the tax collector's rate book, the detailed record of the tax collector's actions, had not been posted after July 2, 1991. The auditors determined that the sum of $2420.75 was missing and that Ashford had suffered a financial loss in excess of $2000.

On the deposit slips prepared by the defendant for the tax collector between February 8 and March 5, 1991, only $4.39 was identified as cash. The remainder of the deposits consisted of checks. Several checks included in these deposits represented alleged payments for taxes for which no validated tax bill could be found. A validated tax bill is a form of receipt showing the payment of the tax as indicated on the rate or tax bill.

During this period of time, approximately $2000 in cash was paid to the town by way of tax payments. The defendant received those payments directly from taxpayers in cash and validated rate bills for the payments. Many of the notations on the validated rate bills are in the handwriting of the defendant. Moreover, the defendant prepared all of the deposits during this period of time, made regular reports to the town treasurer that conformed to the amount shown on the deposit slips she prepared, and had unrestricted access to the office cash register. Many taxpayers who had made payments to the defendant were reported as being delinquent.

Robert Brousseau, an employee of the division of criminal justice, conducted a review of the tax collector's records for the period February 11 to March 5, 1991. During this review, Brousseau examined the rate bills, register tapes, reports to the treasurer and bank photocopies of deposit records. He examined five consecutive deposits collectively and also analyzed a deposit for May 3, 1991. He determined that in the five consecutive deposits there were checks that pertained to validated rate bills for which there was no evidence that payments had been made. Moreover, there were checks listed in the deposits that did not correspond to any validated rate bills. Additionally, in his examination of the deposit of May 3, 1991, he determined that the deposit showed cash of about $1800, but that there were not sufficient rate bills that had not been paid by check to support that amount of cash.

On the basis of his review, Brousseau determined that the defendant had perpetrated a lapping scheme in the tax collector's office. Brousseau explained that the defendant rotated individual checks and money orders in order to conceal her taking of cash. Brousseau determined that the total deposits should have been in the amount of $41,700 and that the deposits totaled

only $38,355. Thus, he determined that Ashford had lost $3345.

The defendant testified in her own behalf. She testified that she had never taken money that belonged to Ashford and that any missing money was taken by the former tax collector, Robin LaRosa.

The defendant asserted that in late 1989 she had observed LaRosa manipulating checks being run through the cash register. She testified that LaRosa was collecting statutory fees for tax warrants issued and that when a check came into the tax office to make a payment or to make a partial payment on a tax warrant, the fees would be included in the payment. It was the defendant's claim that LaRosa would put the check into the register and take cash from the register to cover the amount of her fees. She further claimed that when there was insufficient cash to cover the fees, LaRosa would take checks or money orders of sufficient amount to cover the unpaid portion of the fees. Then, when cash came in, LaRosa would take the cash and replace it with the checks or money orders that she had previously removed. The defendant also testified that LaRosa often cashed paychecks and personal checks from the cash drawer.

On the basis of the evidence before it, the trial court found the defendant guilty of larceny in the first degree and not guilty of larceny in the second degree.

I

The defendant first claims that the trial court failed to canvass her properly at the time that she withdrew her election to be tried by the jury and elected to be tried by the court. The defendant posits that this failure to canvass properly left the trial court without the ability to determine whether her waiver of her right to a jury trial was knowing, intelligent and voluntary. The

defendant asserts that this violated her fundamental right to a jury trial, guaranteed by the United States[2] and Connecticut[3] constitutions. We do not agree.

Certain additional facts are necessary to an understanding of our resolution of this issue. On November 10, 1992, the defendant was presented at the Superior Court in geographical area eleven, on a charge of larceny in the first degree. The court gave an advisement of rights to all persons present, including the defendant, that included the fact that the defendant was entitled to a trial by jury. The court ordered the defendant's case transferred to the Putnam Superior Court. On November 20, 1992, the defendant appeared before the Putnam Superior Court, pleaded not guilty and elected to be tried by a jury.

On April 30, 1993, the defendant and her counsel appeared before the trial court. Counsel informed the trial court that while the not guilty pleas were to stand, the election for jury trial was to be withdrawn. Defense counsel requested that the matter be set down for trial by the court.[4] After both defense counsel and the state's attorney had finished making statements to the court concerning the possible exchange of information, the

[2] The constitution of the United States, article three, § 2, provides in pertinent part: "The trial of all Crimes, except in Cases of Impeachment, shall be by jury . . . ." In addition, the sixth amendment to the United States constitution provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury . . . ."

[3] The constitution of Connecticut, article first, § 8, provides in pertinent part: "In all criminal prosecutions, the accused shall have a right . . . to a speedy, public trial by an impartial jury. . . ." Moreover, article first, § 19, of the Connecticut constitution provides: "The right of trial by jury shall remain inviolate."

[4] The defendant's counsel's request to the trial court was as follows: "It's our intention today to withdraw the claim for a jury trial in this matter, let the not guilty pleas stand and ask that the matter be set down for a court trial . . . ."

trial court addressed the defendant directly. The trial court asked the defendant whether she had discussed with her attorney the change in election of the method of trial and whether she understood that she was giving up her right to a jury trial. The defendant answered both inquiries affirmatively.[5] Accordingly, the matter was transferred to the court trial list and proceeded before the court without a jury.

The defendant concedes that her present claim was not raised before the trial court and was thus not properly preserved. The defendant seeks review of this claim under the standards of *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989).[6] Since the record is adequate for review and the claim advanced implicates a fundamental constitutional right; see *Boykin* v. *Alabama*, 395 U.S. 238, 242–43, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); the defendant has satisfied the first two prongs of *Golding*, and is entitled to a review of her unpreserved claim. See *State* v. *Golding*, supra, 239–40.[7]

We first set out the standard of review that applies to claims such as that advanced by the defendant. "The right to a jury trial in a criminal case is among those

[5] The colloquy between the defendant and the court was as follows:

"The Court: No problem at all. Friday the 4th. Miss Tangari, you've discussed this change thoroughly with your lawyer?

"The Defendant: Yes.

"The Court: You understand you're giving up your right to have a jury trial?

"The Defendant: Yes.

"The Court: Transferred then to the court list and continued under the same bond until June 4th."

[6] While the defendant does not specifically direct us to *State* v. *Golding*, supra, 213 Conn. 233, as the source of her authority to seek review, she does direct us to the earlier case of *State* v. *Evans*, 165 Conn. 61, 327 A.2d 576 (1973).

[7] "The first two conditions [of *Golding*] are determinations of whether a defendant's claim will be reviewed, and the third condition involves a review of the claim itself." *State* v. *Graham*, 33 Conn. App. 432, 442, 636 A.2d 852, cert. denied, 229 Conn. 906, 640 A.2d 117 (1994).

constitutional rights which are related to the procedure for the determination of guilt or innocence. The standard for an effective waiver of such a right is that it must be knowing and intelligent, as well as voluntary. . . . This strict standard precludes a court from presuming a waiver of the right to a trial by jury from a silent record. . . . In determining whether this strict standard has been met, a court must inquire into the totality of the circumstances of each case. . . . When such a claim is first raised on appeal [such as in this case], our focus is on compliance with these constitutional requirements rather than on observance of analogous procedural rules prescribed by statute or by the Practice Book." (Internal quotation marks omitted.) *State* v. *Groomes*, 232 Conn. 455, 474–75, 656 A.2d 646 (1995).

Applying these principles, we conclude that the record supports a determination that the trial court sufficiently complied with the constitutional requirement of advising the defendant that by electing a trial to the court, she was giving up or waiving her right to be tried by a jury. When asked about her decision to waive a jury trial, the defendant confirmed that she had discussed the decision to give up her right to a jury trial with her counsel and that she understood that by electing a court trial she was giving up her right to a trial by jury.

"The determination of whether there has been an intelligent waiver . . . must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused." (Internal quotation marks omitted.) *State* v. *Shockley*, 188 Conn. 697, 707, 453 A.2d 441 (1982). We first note that this is not a silent record. See *State* v. *Alicea*, 41 Conn. App. 47,

54–55, 674 A.2d 468 (1996). Here, the record reflects that the defendant had been advised of her constitutional right to a trial by jury in open court at her arraignment. Further, the defendant was represented by competent counsel and she indicated that she had fully discussed with her attorney her waiver of the right to a jury trial. Cf. *Oppel* v. *Lopes*, 200 Conn. 553, 557, 512 A.2d 888 (1986); *State* v. *Alicea*, supra, 56–57. Moreover, the defendant responded affirmatively when asked whether she understood that by electing to be tried by the court, she was giving up her right to a trial by jury.

We conclude, in light of the totality of the circumstances on the record, that the defendant waived her right to a jury trial and that her waiver was voluntary, knowing and intelligent.[5]

II

Next, the defendant asserts that the evidence produced at trial was insufficient to establish that she possessed the requisite intent to deprive another person of property or to appropriate the same to herself or a third party. See General Statutes § 53a-122 (a) (4) and General Statutes § 53a-119 (6). We are unpersuaded.

" 'When called on to review a challenge to the sufficiency of the evidence to support a conviction, we undertake a two part analysis. . . . First, we construe the evidence in the light most favorable to sustaining

[5] We do not discuss separately the defendant's claim that the action of the trial court violated rights guaranteed to her under the Connecticut constitution. Our Supreme Court has determined that there is "no reason to demand as a constitutional necessity a more elaborate procedure for an effective waiver of the right of jury trial as guaranteed by our state constitution." *State* v. *Marino*, 190 Conn. 639, 646, 462 A.2d 1021 (1983). We are, of course, bound by the decisional law of our Supreme Court. *State* v. *Reis*, 33 Conn. App. 521, 527, 636 A.2d 872, cert. denied, 229 Conn. 901, 640 A.2d 118 (1994).

the [finding]. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [trial court] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt.'" *State* v. *Cintron*, 39 Conn. App. 110, 118, 665 A.2d 95 (1995).

The trial court articulated on the record the factual findings that led it to find the defendant guilty of the charge of larceny in the first degree. The trial court found that the town lost $3345 in cash receipts. It also found that many taxpayers identified the defendant as the person to whom cash payments were made and who had validated their rate bills. The trial court further determined from the evidence that the defendant prepared all of the deposit slips and reports to the town treasurer during the period when the cash was taken. Moreover, the court determined that the reports conformed to the amounts shown on the deposit slips as a result of a lapping scheme carried out by the defendant.

The trial court further found that the defendant's testimony that her supervisor routinely withdrew cash from the register in payment of certain statutory fees and to cash paychecks and personal checks lacked credibility. The evidence disclosed that during the period in question no paychecks or personal checks of the tax collector were reflected in the deposits and that the statutory fees involved were nominal.

The trial court found that the circumstantial evidence produced and the reasonable inferences drawn therefrom proved the defendant guilty of the crime of larceny in the first degree by defrauding a public community of a sum in excess of $2000.

"In applying this analytical framework to the circumstances before us, we acknowledge that it appears that

the defendant's conviction is premised, in large measure, on circumstantial evidence. [I]t is of no moment that much of the relevant evidence may be circumstantial. . . . [T]here is no legal distinction between direct and circumstantial evidence so far as probative force is concerned. . . . It is not one fact, but the cumulative impact of a multitude of facts which establishes guilt in a case involving substantial circumstantial evidence." (Internal quotation marks omitted.) *State* v. *Haggood*, 36 Conn. App. 753, 760–61, 653 A.2d 216, cert. denied, 233 Conn. 904, 657 A.2d 644 (1995).

"We must also acknowledge in our review of the evidence that it is the right and the duty of the [fact finder] to draw reasonable and logical inferences from the evidence. . . . Moreover, the [fact finder] may draw inferences on the basis of facts that it finds as a result of other inferences. . . . [I]n viewing evidence which could yield contrary inferences, the [fact finder] is not barred from drawing those inferences consistent with guilt and is not required to draw only those inferences consistent with innocence. The rule is that the [fact finder's] function is to draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical. . . . We do not sit as [an alternate fact finder] who may cast a vote against the verdict based upon our feeling that some doubt of guilt is shown by the cold printed record. We have not had the [fact finder's] opportunity to observe the conduct, demeanor, and attitude of the witnesses and to gauge their credibility." (Citations omitted; internal quotation marks omitted.) Id., 761.

"In considering the evidence introduced in a case, [fact finders] are not required to leave common sense at the courtroom door . . . nor are they expected to lay aside matters of common knowledge or their own observations and experience of the affairs of life, but,

on the contrary, to apply them to the facts in hand, to the end that their action may be intelligent and their conclusions correct." (Citation omitted; internal quotation marks omitted.) *State* v. *Patterson*, 35 Conn. App. 405, 414, 646 A.2d 258, cert. denied, 231 Conn. 930, 649 A.2d 254 (1994); see also *State* v. *Little*, 194 Conn. 665, 674, 485 A.2d 913 (1984).

After a careful review of all of the evidence, we conclude that the cumulative effect of the evidence was sufficient to permit the trial court to have found the defendant guilty of the crime of larceny in the first degree. Thus, the defendant's assertion that the state failed to prove the intent of the defendant to prejudice Ashford by depriving it of property is without merit.

The judgment is affirmed.

In this opinion the other judges concurred.

No. A.C.14967

STATE OF CONNECTICUT	:	**APPELLATE COURT**
v.	:	**S T A T E O F CONNECTICUT**
SUSAN TANGARI	:	**MARCH 6, 1997**

ORDER

THE MOTION OF THE DEFENDANT, FILED FEBRUARY 14, 1997, FOR REARGUMENT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

O R D E R E D **DENIED.**

BY THE COURT,

/s/
ASSISTANT CLERK - APPELLATE

NOTICE SENT:3/6/97
MARJORIE ALLEN DAUSTER, A.S.A.
F. MAC BUCKLEY
HON. ROBERT A. MARTIN
CLERK, SUPERIOR COURT, WINDHAM
CR92 81860
REPORTER OF JUDICIAL DECISIONS

dcm

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-96-0329

State of Connecticut

v.

Susan Tangari

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal from the Appellate Court (44 Conn. App. 187 [AC 14967]), it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

/s/
ASSISTANT CLERK-APPELLATE

Dated: May 1, 1997
Notice Sent: 5/1/97
Clerk, Superior Court, Windham at Putnam
081860S
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
Law Offices of F. Mac Buckley
Office of the Chief State's Attorney
Appellate Bureau
F. Mac Buckley in support of petition;
Marjorie Allen Dauster, Assistant State's Attorney, in opposition.
bjm

Excerpt from state trial transcript of Petitioner's Arraignment Proceeding dated November 10, 1992.

MR. CARIDAD: Turning to our criminal business, line 67 on the criminal docket, Susan Tangari.
THE COURT: What number was that again?
MR. CARIDAD: I have it as line 67, your honor.
THE COURT: Sixty-seven.
THE CLERK: Sixty-seven.
MR. CARIDAD: Your Honor, this matter's been approved for transfer to Part A of the Judicial District. I'd ask that the Court order the matter transferred under the same bond with a continuance date of November 20, a Friday, at Putnam.
THE COURT: All right. Your file is transferred to Part A court. That's in Putnam on November the 20th. Please sign your transfer slip in the clerk's office before you go.
MR. MEISLER: Thank you.
MR. CARIDAD: Thank you, your Honor.

Excerpt from state trial transcript of Petitioner's Waiver dated April 30, 1993.

MR. STABILE: Good afternoon, Your Honor.
THE COURT: Hello.
MR. STABILE: Number nine on the pretrial docket, Susan Tangari.
THE COURT: Mr. Meisler.
MR. MEISLER: Yes, Your Honor. It's our intention today to withdraw the claim for a jury trial in this matter, let the not guilty please stand and ask that the matter be set for a court trial, and Mr. Stabile has a request for certain documents that relate to the investigation which I think we've going to need to analyze the actual trial, but they're matters going over the arrest warrant affidavit that the State has access to.
MR. STABILE: What I'm going to suggest to the Court, Your Honor, is have the matter continued to a regular Friday docket in June, and in the meantime, Mr. Meisler has provided me with some new information today, and this will give everybody an opportunity to evaluate that information and get the information that he is requesting, and then perhaps on that date if we're unable to resolve the matter, we can set down that matter for the court trial at that time. (Cont.)

THE COURT: No problem at. Friday the 4th. Miss Tangari, you've discussed this change thoroughly with your lawyer?
THE COURT: You understand you're giving up your right to have a jury trial?
THE DEFENDANT: Yes
THE COURT: Transferred then to the court list and continued under the same bond until June 4th.
MR. MEISLER: Thank you, Your Honor.
(Whereupon, the matter was concluded.)